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In re Application of
Eun-Jun Kwak
Application No. 09/897,742
Filed: July 2, 2001
For: **METHOD FOR CREATING
CARICATURE**

MAILED

JUN 17 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed May 26, 2005, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On July 2, 2004 , a non-final Office action was mailed in the instant application. A response from Applicants was not received. Accordingly, the application became abandoned. No Notice of Abandonment has been mailed.

Petitioner alleges that the Office action of July 2, 2004 was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the application file finds no irregularity in the mailing of the Office action since it was mailed to the address of record at that time. A review of the file further finds that the Office action in question was returned as undeliverable and, as stated in the petition by petitioner, the failure of applicant to receive the Office action was not a result

of Office error, but rather as a result of applicant's failure to timely notify the Office of a change in correspondence address.

37 C.F.R. § 1.33 states:

(a) The applicant, the assignee(s) of the entire interest (see §§ 3.71 and 3.73) or an attorney or agent of record (see §1.34(b)) may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the application will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant, so long as a post office address has been furnished in the application. Double correspondence with an applicant and his attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent be made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

Petitioner admits that the PTO was not timely notified of the change in correspondence address and therefore there was no irregularity in the mailing of the Office action. **The reason for applicant's failure to receive the Office action appears to be unintentional.**

For the above reasons, the petition under 37 CFR 1.181(a) is **DENIED**.

Petitioner may want to consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).

The file is being forwarded to the examiner for mailing a Notice of Abandonment. From there, the file will be returned to the Files Repository.



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